

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Central Illinois Light Company)	
d/b/a Ameren CILCO)	
)	
Central Illinois Public Service Company)	
d/b/a Ameren CIPS)	
)	Docket No. 10-0568
Illinois Power Company)	
d/b/a AmerenIP)	
)	
Verified Petition for Approval of)	
Integrated Electric and Natural)	
Gas Energy Efficiency Plan)	

**REPLY BRIEF ON EXCEPTIONS ON REHEARING OF THE STAFF OF
THE ILLINOIS COMMERCE COMMISSION**

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Now comes the Staff of the Illinois Commerce Commission ("Staff"), by its attorneys, and pursuant to Section 200.830 of the Commission's Rules of Practice, 83 Ill. Adm. Code 200.830, respectfully submits this Reply Brief on Exceptions on Rehearing ("RBOE on Rehearing") to the Administrative Law Judge's Proposed Order on Rehearing ("ALJPO on Rehearing") issued on April 15, 2011. Staff and other parties filed Briefs on Exceptions on Rehearing ("BOE on Rehearing") on May 5, 2011. This RBOE on Rehearing follows.

I. Introduction

This RBOE on Rehearing replies to exceptions filed by the Ameren Illinois Company ("Ameren") and the People of the State of Illinois ("AG"). For purposes of this RBOE on Rehearing, Staff has used the following acronyms for various terms in this brief: energy efficiency ("EE"), Stakeholder Advisory Group ("SAG"),

Net-To-Gross (“NTG”) framework, program year (“PY”), total resource cost (“TRC”) test, Illinois Public Utilities Act (“PUA” or “Act”), kilowatthours (“kWh”), Technical Reference Manual (“TRM”), and Evaluation, Measurement, and Verification (“EM&V”) Framework.

II. Update Load Shapes and Useful Lives for EE Measures – Reply to Ameren

Staff recommends that the Commission reject Ameren’s proposed language on the timing for updating load shapes and useful lives. While Staff agrees with Ameren that application of the NTG framework should be rejected,¹ Staff urges rejection of Ameren’s exceptions intended to fix load shape and useful life values for measures over the course of Ameren’s Plan. (Ameren’s BOE on Rehearing, pp. 5-7)

The Commission initially rejected Staff’s recommendation that load shape and useful life values for energy efficiency measures should be updated on an ongoing basis along with other items in a TRM, stating that it “finds no evidence to support Staff’s recommendation and it is therefore rejected.” (Final Order, p. 73)² The ALJPO on Rehearing correctly reverses that decision. (ALJPO on Rehearing, p. 20) The PUA requires that these values be updated annually, stating that the utility shall “[p]rovide for an annual independent evaluation of the performance of the cost-effectiveness of the utility's portfolio of measures.” (220 ILCS 5/8-103(f)) (emphases added) The Act provides, in pertinent part:

¹ Ameren disagrees with any incorporation of the NTG framework, “because it will result in an unworkable, unfair framework.” (Ameren BOE on Rehearing, p. 5)

² The discussion regarding cost-effectiveness calculations contained in Ameren’s EE Plan that is in the record provides evidence to support Staff’s recommendation. (Ameren Ex. 1.1 (Rev.), pp. 21-44)

"[C]ost-effective" means that the measures satisfy the total resource cost ["TRC"] test which, for purposes of this Section, means a standard that is met if, for an investment in energy efficiency, the benefit-cost ratio is greater than one. The benefit-cost ratio is the ratio of the net present value of the total benefits of the measures to the net present value of the total costs as calculated over the lifetime of the measures.

(220 ILCS 5/8-104(b)) (emphases added)

These annual cost-effectiveness calculations include assumptions regarding the lifetime (or useful life) of the measures. It would be unwise to hold the assumptions regarding lifetime of the measures constant as new and better information becomes available over the three years of portfolio implementation. Holding the measure useful life values constant over the three years of portfolio implementation makes the statutorily required cost-effectiveness calculations less reliable. Reliable cost-effectiveness calculations are essential to ensuring that consumers benefit, particularly given the fact Ameren claims it cannot achieve the unmodified energy savings standards³ set forth in 220 ILCS 5/8-103(b). As the Act states, in pertinent part: "Requiring investment in cost-effective energy efficiency and demand-response measures will reduce direct and indirect costs to consumers by decreasing environmental impacts and by avoiding or delaying the need for new generation, transmission, and distribution infrastructure." (220 ILCS 5/8-103(a)) (emphasis added) With respect to updating factors that may impact cost-effectiveness (i.e., TRC test value), it may initially seem inconsistent to argue against adjusting NTG ratio values over the three-year plan that impact TRC test values, while also arguing for adjusting

³ The unmodified energy savings standards for PY4 (2011), PY5 (2012), and PY6 (2013) result in load reduction targets of 309,732 MWh, 392,640 MWh, and 557,787 MWh, respectively. Ameren's Revised EE Plan states that Ameren will not meet the PY5 and PY6 unmodified energy savings standards. (Ameren Revised EE Plan, pp. 7-8)

lifetime of the measures that impact these cost-effectiveness calculations. However, it is important to note that the measure lifetime calculations are based on scientific engineering and laboratory research that are the subject of general consensus across the United States, while the art of estimating NTG ratio values relies heavily on self-report survey results that can vary dramatically, as Staff demonstrated in testimony. (Staff Ex. 1.0, p. 23; AG Ex. 1.0, pp. 36-37) The standard for prudence is that the decisions made by management were reasonable at the time they were made. By adjusting TRC test values, Staff is not making a judgment that the old values were either reasonable or unreasonable at the time they were made. Rather, Staff is recommending that the Commission should direct the Company to continuously manage the program and protect ratepayers from decisions that would have been imprudent when they were made.

Clearly the statutorily compressed timeframe of this docket made investigation of the details and assumptions of the hundreds of energy efficiency measures included in Ameren's portfolio a formidable, if not impossible, task.⁴ Presumably, the Commission ordered the creation and development of a statewide TRM to be developed with SAG input to allow these technical details to be properly investigated and the best information incorporated. This approach would enable energy savings and cost-effectiveness calculations to improve over time. Considering the TRM will document values used to calculate plan savings

⁴ Ameren witness Weaver notes, "Ms. Hinman and Mr. Mosenthal both state they do not necessarily support the specific load shapes and measure lives that Ameren Illinois has proposed in this case. Staff Ex. 1.0, p. 20, lines 456-458; AG Ex. 1.0, p. 32, lines 28-30, p. 33, lines 1-2." (Ameren Ex. 10.0, p. 20)

and cost effectiveness, it is advisable to have these values updated as the statewide TRM is created, so that the utilities are held accountable to implementing cost-effective energy efficiency portfolios to maximize benefits for ratepayers.⁵

Staff believes that the ALJPO on Rehearing correctly rejects the language regarding fixing load shape and useful life values for energy efficiency measures. The ALJPO on Rehearing's conclusion in this regard is amply supported by the record. Therefore, Staff recommends the Commission reject Ameren's exceptions intended to fix load shape and useful life values for measures over the course of Ameren's Plan. (Ameren's BOE on Rehearing, pp. 5-7) Staff further recommends the Commission adopt Staff's position in this regard and either: (1) include Staff's proposed language as presented in the "Proposed Language" Section of this RBOE on Rehearing if the Commission adopts the NTG framework; or (2) if the Commission rejects the NTG framework, as Staff and Ameren recommend, then Staff recommends that the ALJPO on Rehearing's language on page 18 be modified as presented below.

The Commission finds that the Request for Clarification regarding the TRM filed by the Movants is well founded and that the changes to the Order regarding the TRM suggested by the Movants are appropriate and should be adopted. The Commission finds that the Request for Clarification regarding the net-to-gross ratios filed by the Movants is not well founded and that the changes to the Order regarding net-to-gross ratios suggested by the Movants are inappropriate and should not be adopted. The Commission finds that Order should be clarified in the following manner.

⁵ Ameren's EE Plan states: "Applying this level of rigor to the program level cost-effectiveness screening analysis helped yield programs with the greatest number of both electric and gas measures delivered at a cost that reflects the ability to leverage both electric and gas budgets to minimize ultimate costs to customers." (Ameren Ex. 1.1 (Rev.), p. 44) (emphases added)

The seventh paragraph in the "Commission Analysis and Conclusion" beginning at the bottom of page 69 should be modified as follows.

Generally, the parties agree that the development of a TRM is appropriate. While some parties believe it is appropriate to develop a statewide TRM, others believe, at a minimum, it is premature to develop a statewide TRM. ELPC witness Crandall, for example, recommends that the SAG should take primary responsibility for developing one statewide TRM. ~~Having reviewed the record on this issue, the Commission concludes that it is neither necessary nor appropriate to order a statewide TRM in this proceeding.~~ The Commission directs that Ameren will work with other utilities subject to the requirements of Section 8-103 and 8-104 of the PUA and the SAG to develop a statewide TRM in the future for use in the upcoming energy efficiency three-year plan cycle. This will allow a consistent format to be developed for a TRM. The Commission also accepts Ameren's recommendation that Ameren, as well as ComEd, and the independent evaluators strive to understand differences in evaluation results and to reconcile differences not driven by differences in weather, market and customers.

~~Additionally, the tenth paragraph of that same section, in approximately the middle of page 70, should be modified as follows.~~

~~— As an initial matter, the Commission notes that it finds some of the arguments regarding fixed values, deeming, NTG and related issues to be confusing. The Commission again rejects the AG's recommendation that "the Fixed Values be consistent with the SAG NTG framework. AG Exhibit 1.0 and the Settlement Stipulation agreed to in the ComEd EE case, Docket No. 10-0570." Not only is it somewhat unclear what specifically the AG wants, it is inappropriate to impose the terms of a settlement in another proceeding on Ameren in this proceeding. Despite the confusion, Ameren, Staff, CUB, and NRDC-ELPC appear to agree to some extent that plan savings and cost-effectiveness calculations be made using fixed values for unit savings that apply to at least some standard measures. Among other things, CUB suggests that the Commission policy with respect to~~

~~deemed parameters for gross measure savings and other parameters should be consistent across utilities. As outlined above, NRDC-ELPC identified specific standard items for which it believes deeming of gross measure savings is appropriate. NRDC-ELPC recommends that the actual deemed values be determined in a separate proceeding. Finally, the Commission notes that the timing for updated fixed value will be addressed separately below in this conclusion.~~

~~Finally, a new final paragraph should be inserted at the bottom of page 72, and the existing final paragraph beginning on the bottom of page 72 and carrying over to page 73 should be deleted~~ modified ~~as shown below.~~

~~The Commission finds the NTG framework described above reasonable, would provide consistency with the findings in the ComEd case, Docket No. 10-0570, and it is hereby approved.~~

~~—Turning next to the timing for updating fixed values, the AG expressed some concerns with Ameren's proposal for updating unit savings and NTG ratios, and in response, Ameren modified its proposal. Among other things, Ameren's modified proposal, increases the speed at which new fixed values are implemented. It appears that Ameren's modified proposal, as described above, would effectively mitigate the concerns raised by the AG. Staff recommends that load shape and useful life measures be updated on an ongoing basis along with other items in a TRM. The Commission finds no evidence to support Staff's recommendation and it is therefore rejected. The Commission finds that the record of this proceeding supports adopting Ameren's modified proposal for updating unit savings and NTG ratios, as explained in the rebuttal testimony of Ameren witness Weaver, Ameren Ex. 10.0. The Commission finds that the record of this proceeding supports adopting Ameren's modified proposal for updating unit savings values, as explained in the rebuttal testimony of Ameren witness Weaver, Ameren Ex. 10.0. The Commission directs Ameren to annually update load shape and useful life measure values in order to ensure the annual cost-effectiveness calculations performed pursuant to 220 ILCS 5/8-103(f)(7) are reliable. These updated values shall be consistent with the TRM. Ameren is directed to~~

file a report describing updates to the fixed unit savings values for standard measures in Docket No. 10-0568 prior to the beginning of the program year in which they are to be fixed.

The remainder of the "Commission Analysis and Conclusion" contained on pages 68-73 of the December 21, 2010 Order, except as explicitly modified above, is hereby affirmed.

(ALJPO on Rehearing, pp. 18-20)

With respect to the timing for updating fixed values for standard measures, another option for replacement language would be to clarify the first paragraph on page 71 of the Final Order where the Commission actually adopts the proposal for prospective application of fixed values to unit savings updated annually for standard measures:

As noted above, Staff supports the prospective application of fixed values to unit savings updated annually for standard measures in calculating plan savings as it increases certainty, reduces risk on the utility, and reduces litigation complexity. The Commission finds Staff's argument convincing and it is hereby adopted as presented in the rebuttal testimony of Ameren witness Weaver, Ameren Ex. 10.0. The Commission directs Ameren to annually update load shape and useful life measure values in order to ensure the annual cost-effectiveness calculations performed pursuant to 220 ILCS 5/8-103(f)(7) are reliable. These updated values shall be consistent with the TRM. The Commission adopts the fixed values for standard measures proposed by Ameren as found in Staff Group Cross Exhibit No. 1 Part 1, pp. 96-104, and Staff Group Cross Exhibit No. 1 Part 2, pp. 1-80. Ameren is directed to file a report describing updates to the fixed unit savings values for standard measures in Docket No. 10-0568 prior to the beginning of the program year in which they are to be fixed.

III. Reject the NTG Framework – Reply to the AG

Staff recommends that the Commission reject the AG's proposed language adopting the NTG framework. (AG's BOE on Rehearing, p. 15) As Staff describes in its BOE on Rehearing, adoption of the NTG framework should

be rejected because: (1) it is not in the best interest of ratepayers; (2) there are a number of negative consequences affecting other parts of the Final Order; and (3) it would have a highly detrimental impact on the implementation of energy efficiency programs in Illinois. (Staff's BOE on Rehearing, pp. 4-5) Staff presented compelling reasons for rejecting adoption of the NTG framework, including negative ramifications for Ameren's Revised EE Plan and independence of the Company-hired evaluators, its inconsistency with prior Commission Orders,⁶ internal contradictions within the Final Order, and risks to the Company's ability to achieve its EE goals.⁷ (Staff's BOE on Rehearing, p. 7)

The Commission adopted divergent methodologies across ComEd and Ameren's EE Plan 2 dockets (10-0570 and 10-0568) with respect to updating energy savings targets. In ComEd's EE Plan 2 Order, the Commission directed that ComEd's energy savings targets and spending limits be updated annually. (Final Order, Docket No. 10-0570, p. 40, December 21, 2010) As a result, ComEd's energy savings target for PY4 has declined due to the revised and reduced spending calculation. In contrast, Ameren's modified energy savings targets for Plan 2 are "fixed", as they were in the first EE Plan approved in

⁶ Rejection of the NTG framework is similar to other situations in which this Commission approved the use of deemed NTG ratio values for all years of an energy efficiency plan. (MidAmerican Ex. 1.0, Docket Nos. 08-0107/08-0108 (Consol.), pp. 111-120; Final Order, Docket Nos. 08-0107/08-0108 (Consol.), p. 8, May 21, 2008)

⁷ If the Company fails to achieve its EE goals, the result would be the Illinois Power Agency ("IPA") taking over Ameren's electric EE programs while Ameren continues to implement its gas EE programs. Given the economies of scope that the General Assembly recognized regarding the integration of gas and electric energy efficiency programs (See 220 ILCS 5/8-104(f)(6) and 220 ILCS 5/8-104(k)), Staff believes it would not be in the public interest to put Ameren in a situation doomed for failure (retroactive application of NTG ratios). The result would be very disruptive to the energy efficiency programs in Ameren's service territory and would likely be a very inefficient use of resources; in other words, the inexperienced IPA implementing Ameren's electric EE programs while Ameren implementing its natural gas EE programs. Any economies of scope that ratepayers benefit from by having Ameren implement integrated gas and electric programs are lost in this scenario.

Docket No. 07-0539. Adoption of the NTG framework would place Ameren at a substantial disadvantage in meeting the modified energy savings standards in part because its goals would not be updated annually with its spending screen.

This increased risk for Ameren's portfolio is another reason why the NTG framework should not be adopted, as even if Ameren's annual revised spending limit results in a reduced level of spending, Ameren is still held accountable to the modified energy savings goals that were originally approved and that assumed a higher level of spending, making it even more difficult to achieve the savings targets because of reduced funding. Staff recommended that the Commission impose a consistent methodology across electric utilities in this regard, and further recommended that the Commission order Ameren to update its energy savings goals along with its spending screens as part of its annual reconciliation process. (Staff Rev. IB, p. 12; Staff Corr. BOE, pp. 9-10) The Commission declined to adopt Staff's recommendations, and the energy savings targets are therefore updated inconsistently across electric utilities.

Given this discrepancy across electric EE dockets regarding the update of energy savings targets, Staff believes that it is reasonable to adopt different EM&V frameworks across dockets. Additionally, considering the Commission approved DCEO's EE Plan, its EM&V framework, and its proposal to hire its own evaluation contractor in Docket No. 10-0570, Staff believes that adopting different EM&V frameworks across dockets would not add any complications to the evaluation of DCEO's portion of the utilities' portfolios, which seemed to be of some concern in the first EE Plan dockets. (DCEO Ex. 1.0, pp. 48-52; Order on

Rehearing, Docket No. 10-0570, p. 3, May 4, 2011; Final Order, Docket No. 07-0539, p. 29, February 6, 2008)

Staff recommends the Commission reject the AG's proposed language adopting the NTG framework. (AG's BOE on Rehearing, p. 15) Staff also recommends the Commission reject the ALJPO on Rehearing's language adopting the NTG framework. (ALJPO on Rehearing, p. 19) In the event the Commission rejects Staff and Ameren's recommendations in this regard, then Staff recommends the Commission adopt all of the modifications to the NTG framework that are contained in the "Proposed Language" Section of this RBOE on Rehearing. The justifications for the adoption of these language changes are contained in the subsections below. Staff emphasizes that these NTG framework modifications would not solve all the problems⁸ that would result from the Commission adopting this framework for Ameren's integrated gas and electric energy efficiency portfolio. In particular, the inherent flaw of the NTG framework is its reliance on retrospective application of estimated NTG ratio values. This potential for retrospective application produces an unmanageable burden on Ameren.

A. Modifications to Reduce Problems with the Net-To-Gross ("NTG") Framework Should the Commission Decide to Adopt the NTG Framework (which Staff and Ameren recommend it should not)

1. Specific exclusions to NTG framework consistent with ComEd docket.

⁸ See Ameren's BOE on Rehearing, p. 5 and Ameren's Application for Rehearing

In its BOE on Rehearing, the AG applauds and supports the ALJPO on Rehearing's clarification on the NTG framework. (AG's BOE on Rehearing, p. 14) In adopting the clarification, the ALJPO on Rehearing indicates the need for consistency across the EE dockets, and in particular with the Commission's findings in Docket No. 10-0570. (ALJPO on Rehearing, pp. 18-19) However, the clarification fails to consider many of the stipulated terms that ComEd agreed to and the Commission approved in its Final Order in Docket 10-0570. (Final Order, Docket No. 10-0570, pp. 46-47; Ameren's BOE on Rehearing, p. 5; Ameren's Application for Rehearing, pp. 9-10) To ensure consistency, explicit exceptions to the NTG framework are needed in the ALJPO on Rehearing.

In the Final Order in Docket No. 10-0570, the Commission recognized that the risk associated with the NTG ratio values is unmanageable because ComEd does not find out how the calculated NTG ratio values impact the program elements until the evaluation report is received long after the program year has ended. (Final Order, Docket No. 10-0570, pp. 46-47) The Commission found that the exceptions to the NTG framework set forth in ComEd's Settlement Stipulation "strike the appropriate balance in maximizing kWh savings while also providing for modification of the energy savings goals in the event unexpected drops in the NTG ratios occur." (*Id.*) Under the Stipulated Settlement, ComEd is effectively insulated from the normally unmanageable risk that the NTG framework imposes with respect to retroactive application of NTG ratios for evaluation purposes. ComEd's Stipulated Settlement provides increases or decreases in the energy savings goals based in part on deviations from some of

the anticipated NTG ratios. (*Id.*; Ameren's BOE on Rehearing, p. 5; Ameren's Application for Rehearing, p. 9)

In contrast, the Final Order and the ALJPO on Rehearing in Ameren's EE docket provide no such similar provision for Ameren and there is nothing in the record to support the appropriate amount of increases or decreases to Ameren's kWh savings goals based on deviations from the NTG ratios used for planning purposes. As a result, Ameren would be subject to a risk the Commission determined to be unmanageable in the ComEd docket. (Final Order, Docket No. 10-0570, pp. 46-47) Additionally, Ameren followed the instructions in the Final Order when it completed its compliance filing and increased its reliance on lighting measures which are precisely those measures most likely to result in retroactive application of NTG ratios. As such, the ALJPO on Rehearing creates a greater risk that Ameren will fail to meet its modified kWh energy savings goals.⁹

As Staff noted in its Initial Brief ("IB"), NTG ratio estimation is an art, not a science, and it is impossible to know what the "true" NTG ratios are for EE programs.¹⁰ (Staff Rev. IB, p. 59) Staff clearly illustrated this uncertainty regarding NTG ratio estimation when it showed that the removal of a single

⁹ See footnote 7 of this RBOE on Rehearing for the implications of this.

¹⁰ AG witness Mosenthal provides a good explanation of NTG ratios: Net-to-gross ("NTG") ratios refer to factors developed through program evaluations to adjust the gross savings utilities are tracking to reflect the ultimate *net* impacts of the programs. Gross savings are generally adjusted for free ridership and spillover. Free ridership refers to those program participants who would have installed the efficiency measures on their own, so while they are counted in the program, no *net* savings are actually occurring. Spillover refers to efficiency measures adopted by customers because of either direct or indirect influence of the program, but who do not formally participate in the program and are therefore not initially counted in the utility tracking system of gross savings. (AG Ex. 1.0, p. 39)

observation (a single participant's response to a telephone survey) resulted in a huge drop in the estimated NTG ratio value from 1.03 to 0.66 for the Residential Lighting Program. (Staff Ex. 1.0, p. 23) This 37 percentage point drop in the NTG ratio value has a dramatic impact on net energy savings and the ability of a utility to meet its statutory energy savings standards. Rather than adjusting the modified energy savings standards for estimated NTG ratio values that are inherently unknown as in the Final Order in Docket No. 10-0570, Staff believes it is sufficient for the Final Order here to fix the NTG ratio values for the Residential Lighting Program and continue to hold Ameren accountable to the modified energy savings goals presented in its Revised EE Plan.¹¹ (Ameren Revised EE Plan, p. 8)

In the event the Commission does not accept Staff and Ameren's recommendations that it should reject the NTG framework, then Staff recommends the Commission adopt clarifications with respect to this issue that are necessary to ensure consistency with the Commission's findings regarding the NTG framework in its Final Order in Docket No. 10-0570. These clarifications to ensure consistency are contained in the "Proposed Language" Section of this RBOE on Rehearing.

2. Clarification to retroactive application of NTG ratio value.

Staff agrees with the concerns raised by Ameren regarding the potential for two years worth of retroactive NTG ratio application. (Ameren's BOE on

¹¹ Staff still would recommend that the Commission order Ameren to update its energy savings goals along with its spending screens as part of its annual reconciliation process as the Commission ordered ComEd to do in Docket No. 10-0570. (Staff Rev. IB, p. 12; Staff Corr. BOE, pp. 9-10; Final Order, Docket No. 10-0570, p. 40)

Rehearing, p. 5; Ameren's Application for Rehearing, pp. 10-12) Staff believes that the NTG framework is vague regarding the retroactive application of NTG values. For example, Ameren's Revised EE Plan provides a table of revised NTG ratio values to deem for Ameren's electric EE program elements as directed by the Final Order. (Final Order, pp. 27, 108-109; Ameren Revised EE Plan, p. 40) In designing Ameren's Revised EE Plan, the SAG (including Ameren) agreed to deem a NTG ratio value of 0.78 for PY4 (2011) for the lighting measures of Ameren's Business Standard Incentive Program, based in part on the evaluation results from PY2 (2009). If the estimated NTG ratio for PY3 (2010) is also 0.78, under prospective application of NTG ratios, this value would be applied for PY5 (2012) until a new evaluation occurs. Suppose the new evaluation occurs for PY5 and the estimated NTG ratio is 0.48, so that the most up-to-date NTG ratio estimate is available for the next three-year plan. Since significant market changes are likely to occur between the evaluation conducted for PY3 and PY5, it is entirely possible that the PY5 evaluation will be used retrospectively to impact the savings from lighting in PY4.¹² This is problematic for several reasons. First, the significant changes to the market most likely did not affect PY4. Ameren's savings are greatly affected and it is unlikely to reach

¹² Consider the implications of the current language contained in the NTG framework, "previously evaluated programs undergoing significant changes – either in the program design or delivery, or changes in the market itself – NTG ratios established through evaluations would be used retroactively, but could also then be used prospectively if the program does not undergo continued significant changes." (Final Order, p. 72) (emphases added) The retroactive language is so broad that this may include applying the 0.48 NTG ratio value to the gross savings of the Business Standard lighting measures for PY4, PY5, PY6 (retrospective application), and PY7 (under prospective application). In addition, the prospective application of the NTG ratio assumed originally under the NTG framework would have resulted in the PY2 NTG ratio of 0.78 being applied to the gross savings in PY4 and the PY3 assumed NTG ratio of 0.78 to be applied to the gross savings in PY5 and PY6, as the prospective application of the estimated NTG ratio for PY5 would apply to the PY7 gross savings of the Business Standard lighting measures.

the modified goals for PY4 even though it modified its plan to include more low-cost measures such as lighting as directed to do as part of its Compliance Filing in this docket.

Unlike ComEd, which had an adjustment to its kWh savings goals based on revisions to its estimated NTG ratios for lighting, Ameren has no recourse for a lower estimated NTG ratio and its ratepayers have no reciprocal gains from a higher than anticipated NTG ratio.¹³ Second, PY5 evaluations are not available until some time into PY6. The docket to determine savings for PY4 could be closed by the time this information is available, making it of no practical use. Finally, the NTG ratio for the Business Standard lighting measures was estimated at 0.58 for PY1 and 0.78 for PY2 – this demonstrates the variability in estimated NTG ratios across program years and the significant level of uncertainty regarding the validity of any estimated NTG ratio. As previously alluded to, it is impossible to know the “true” NTG ratio value.

For the reasons mentioned in its BOE, Staff believes the NTG framework should be rejected and provided language changes in support of its reasons. As the above discussion indicates, the NTG framework is vague regarding the retroactive application of NTG ratio values. Given the estimated NTG ratio for an evaluated program for a Program Year (“PY”) X will not be available until the middle of PY X+1 at the earliest, Staff believes it is unreasonable to apply the new estimated NTG ratio for the evaluated program to PY X-1, which potentially

¹³ Ameren’s increased modified kWh energy savings goals are based, in part, by increasing the estimated participation/installation of Business Standard lighting measures by 24,794. (Ameren EE Plan, Ameren Ex. 1.1 (Rev.), p. 140; Ameren Revised EE Plan, p. 102, Compliance Filing, Jan. 20, 2011)

could happen if the previous evaluation of the program occurred in PY X-2. Therefore, if the Commission chooses to accept the NTG framework, Staff recommends the Commission adopt the proposed language changes listed in the “Proposed Language” Section of this RBOE on Rehearing.

3. Timing for updating fixed unit savings values.

Staff agrees with Ameren that the proposal to strikethrough an entire paragraph is overly broad and leaves unanswered the timing for updating fixed unit savings values. (Ameren’s BOE on Rehearing, p. 5; Ameren’s Response to Joint Motion for Clarification, p. 4) In addition, it is not clear that the fixed values should be linked to the TRM and that updates should be filed on e-Docket to ensure transparency. In the event the Commission rejects Staff and Ameren’s recommendations regarding the rejection of the NTG framework, then Staff recommends the Commission adopt the clarifications to the NTG framework that are contained in the “Proposed Language” Section of this RBOE on Rehearing.

4. The Commission’s role in reviewing the NTG framework.

Staff agrees with the concerns raised by Ameren regarding the vagueness associated with the application of the NTG framework. (Ameren’s BOE on Rehearing, p. 5; Ameren’s Application for Rehearing, p. 11) Staff believes the adoption of the NTG framework as described in the Final Order lacks clarity regarding the following points:

Recommendations of the SAG to the Commission regarding application of this framework shall be submitted with adequate time for Commission review. If the SAG is not in unanimous agreement in its recommendation, the Commission requests that any recommendation that has the support of more than a majority of

SAG members be submitted to the Commission along with a discussion and enumeration of the dissenting opinions.

(Final Order, p. 72) (emphases added)

Staff addressed the problems associated with SAG membership and voting in its BOE on Rehearing and agrees with Ameren in this regard. (Staff's BOE, pp. 6-7; Ameren's BOE on Rehearing, p. 5; Ameren's Application for Rehearing, p. 11) The only guidance provided by the Final Order regarding the SAG submission of reports is as follows:

In addition, the SAG is directed to file the reports related to its responsibilities articulated in this Order, via the Commission's e-Docket system in Docket No. 10-0568.

(Final Order, p. 87)

In Ameren's previous EE Order for Plan 1, when the Commission created the SAG, it directed the SAG to report to the Commission. The AG filed a SAG Facilitator Report in Docket No. 07-0539 on December 10, 2010. No action on this Report has been taken by the Commission.

Given the emphasis placed on Commission review of SAG recommendations of the NTG framework in the Final Order, Staff is not convinced that a SAG report filed in the closed Docket No. 10-0568 would accomplish the type of Commission review envisioned. If it is the Commission's intent to review and approve this framework in a separate proceeding, perhaps following the results from the independent evaluations, then the Commission should include specific language in the Final Order on Rehearing directing Staff to provide draft orders that would initiate proceedings for this purpose. Staff would also note that, lacking guidance on this issue, the potential place for this

review may be in the dockets determining whether Ameren has complied with the statutory energy savings standards. A problem with including this review in these dockets is that this review for the gas programs would not occur until after the program has been implemented for three years, after Ameren has already filed its next three-year plan. If the Commission does approve the NTG framework then Staff recommends that a review of the application of NTG framework for Ameren's gas programs be conducted prior to Ameren filing its next three-year EE plan in order to avoid extensive litigation of this particular unresolved issue during the statutorily mandated compressed time schedules of the energy efficiency dockets.

In the event the Commission rejects Staff and Ameren's recommendations to reject the NTG framework, then Staff recommends the Commission adopt the modifications to the NTG framework that are contained in the "Proposed Language" Section of this RBOE on Rehearing.

5. Independent Evaluations

As described in Staff's BOE on Rehearing, it is particularly problematic that the NTG framework relies completely on the evaluations conducted pursuant to 220 ILCS 5/8-103(f)(7) and 220 ILCS 5/8-104(f)(8). (Staff's BOE on Rehearing, p. 5) Therefore, in the event the Commission does not accept Staff and Ameren's recommendations to reject the NTG framework, then Staff recommends the Commission adopt the modifications to the NTG framework that are contained in the "Proposed Language" Section of this RBOE on Rehearing.

IV. Proposed Language

Staff recommends that the language in Section III, starting at page 19 of the ALJPO on Rehearing be revised as follows:

~~Finally, the paragraphs starting at the sixteenth paragraph of that same section, at the first full paragraph of page 72, should be modified as shown below. a new final paragraph should be inserted at the bottom of page 72, and the existing final paragraph beginning on the bottom of page 72 and carrying over to page 73 should be deleted as shown below.~~

~~While acknowledging and adjusting for this utility uncertainty, the framework document also acknowledges what is the biggest weakness of Ameren's position that NTG value should be deemed for the three-year period: that deeming NTG ratios can result in perverse incentives that might discourage a utility from making appropriate program changes to ensure against high freeridership, at least in the short term, by guaranteeing savings claims regardless of the program's true effectiveness.~~

~~The framework, thus, proposes as follows:~~

- ~~○ Where a program design and its delivery methods are relatively stable over time, and an Illinois evaluation of that program has an estimated NTG ratio, that ratio can be used prospectively until a new evaluation estimates a new NTG ratio.~~
- ~~○ In cases that fall under the paragraph above, once new evaluation results exists, these would be used going forward, to be applied in subsequent program years following their determination until the next evaluation, and so on.~~
- ~~○ For existing and new programs not yet evaluated, and previously evaluated programs undergoing significant changes – either in the program design or delivery, or changes in the market itself – NTG ratios established through evaluations would be used retroactively starting from the program year evaluated, but could also then be used prospectively if the program does not undergo continued significant changes, similar to the first paragraph above.~~
- ~~○ For programs falling under the third paragraph above, deeming a NTG ratio prospectively may be appropriate if:~~

the program design and market are understood well enough to estimate with reasonable accuracy an initial NTG (e.g., based on evaluated programs elsewhere); or it is determined that the savings and benefits of the program are not sufficient to devote the evaluation resources necessary to better estimate a NTG ratio.

- ~~Recommendations of the SAG to the Commission regarding application of this framework shall be submitted with adequate time for Commission review. If the SAG is not in unanimous agreement in its recommendation, the Commission requests that any recommendation that has the support of more than a majority of SAG members be submitted to the Commission along with a discussion and enumeration of the dissenting opinions. The SAG is invited to submit recommendations regarding the provisional deeming of NTG ratio values in the energy savings compliance dockets. For example, after the Commission initiates the program year 3 energy savings compliance dockets by September 1, 2011 as directed by Ameren's first energy efficiency plan Order at page 20 in Docket No. 07-0539, the SAG may submit recommendations for provisional deeming of NTG ratios for program year 5, based in part on evaluation results from program year 3 evaluations. Considering the SAG has already met and agreed to the NTG ratios to deem for program year 4 based in part on the program year 2 evaluations (Ameren Revised EE Plan, p. 40, Table 18, Compliance Filing, Jan. 20, 2011), the Commission finds that it is not necessary for the SAG to provide recommendations in Docket No. 10-0519, Ameren's program year 2 energy savings compliance docket. In addition, Staff is directed to provide a draft order to the Commission to initiate a proceeding concerning the provisional deeming of NTG ratios after the evaluation results for some of the gas energy efficiency programs become available. Starting after the program year 4 evaluation results of the electric and gas energy efficiency programs become available, and only if Staff finds it necessary, Staff should provide draft orders to the Commission to initiate proceedings concerning the provisional deeming of NTG ratios, application of the SAG NTG framework, and/or any other major concerns that arise as a result of the SAG. As a result of the aforementioned proceedings, the Commission hopes that the utility's next energy efficiency plan docket, initiated pursuant to 220 ILCS 5/8-103(f) that requires the Commission issue a Final Order~~

within 90 days, will be less contested in terms of technical issues such as application of NTG ratios and will be more focused on ensuring the filed energy efficiency plan maximizes benefits for ratepayers.

The Commission agrees that the risk associated with the NTG ratio values is unmanageable because Ameren does not find out how the estimated NTG ratio values impact the program elements until the evaluation report is received months after the Plan year has ended. Given that the Commission has directed Ameren to adopt a Residential Lighting Program more akin to that adopted in Plan 1 in an attempt to maximize the energy savings from these relatively low-cost energy efficiency measures, the Commission believes that several exceptions to the NTG framework are supported by the record, reasonable, and strike the appropriate balance in maximizing kWh savings and holding Ameren accountable to the modified energy savings goals. The exceptions to the NTG framework include:

- The assumed net-to-gross ratio of “specialty” CFL bulbs is set at 0.8 per the findings in Massachusetts and will be “deemed”, or set, for all 3 years of the Plan for evaluation and planning purposes.
- The assumed net-to-gross ratio of standard or regular CFL bulbs for Ameren’s Residential Lighting Program will be “deemed”, or set, at 0.58 for PY4 (2011), 0.53 for PY5 (2012), and 0.48 for PY6 (2013) for evaluation and planning purposes.
- The revised NTG ratio values developed in conjunction with the SAG as directed by this Order (p. 27) and as presented in Table 18 of Ameren’s Revised EE Plan filed on January 20, 2011 shall be used on a prospective basis only for Ameren’s electric energy efficiency programs for PY4. Any updates to these values for PY5 and PY6 and for Ameren’s gas energy efficiency programs shall be determined through the SAG NTG framework.
- The Commission notes that the independent evaluations conducted pursuant to 220 ILCS 5/8-103(f)(7) and 220 ILCS 5/8-104(f)(8) shall be considered when applying the NTG framework, but the Commission will consider the other information provided to it in the application of this framework.

Notwithstanding these exceptions to the NTG framework, the Commission finds the NTG framework described above reasonable, would provide consistency with the findings in the ComEd case, Docket No. 10-0570, and it is hereby approved.

~~Turning next to the timing for updating fixed values, the AG expressed some concerns with Ameren's proposal for updating unit savings and NTG ratios, and in response, Ameren modified its proposal. Among other things, Ameren's modified proposal, increases the speed at which new fixed values are implemented. It appears that Ameren's modified proposal, as described above, would effectively mitigate the concerns raised by the AG. Staff recommends that load shape and useful life measures be updated on an ongoing basis along with other items in a TRM. The Commission finds no evidence to support Staff's recommendation and it is therefore rejected. The Commission finds that the record of this proceeding supports adopting Ameren's modified proposal for updating unit savings and NTG ratios, as explained in the rebuttal testimony of Ameren witness Weaver, Ameren Ex. 10.0. The Commission finds that the record of this proceeding supports adopting Ameren's modified proposal for updating unit savings values, as explained in the rebuttal testimony of Ameren witness Weaver, Ameren Ex. 10.0. The Commission directs Ameren to annually update load shape and useful life measure values in order to ensure the annual cost-effectiveness calculations performed pursuant to 220 ILCS 5/8-103(f)(7) are reliable. These updated values shall be consistent with the TRM. Ameren is directed to file a report describing updates to the fixed unit savings values for standard measures in Docket No. 10-0568 prior to the beginning of the program year in which they are to be fixed.~~

V. Conclusion

For the reasons set forth herein, Staff of the Illinois Commerce Commission respectfully requests that the Commission's Final Order in this proceeding reflect all of Staff's recommendations in this Reply Brief on Exceptions on Rehearing.

Respectfully submitted,

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